

STATE OF SOUTH DAKOTA)
: SS.
COUNTY OF MARSHALL)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

* * * * *

RICHARD MILLNER,
Plaintiff,
-vs-

Civ. 12- 4

JILL MILLNER, CHOICE
FINANCIAL GROUP, CENTRAL
LIVESTOCK ASSOCIATION, LLC,
and THE UNITED STATES OF
AMERICA (INTERNAL REVENUE
SERVICE)
Defendants.

S U M M O N S

* * * * *

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon Richardson, Wyly, Wise, Sauck & Hieb, LLP, plaintiff's attorneys, whose address is One Court Street, Aberdeen, South Dakota, an Answer to the Complaint which is herewith served upon you, within thirty (30) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated at Aberdeen, South Dakota, this 6 day of January, 2012.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

By Zachary W. Peterson
Attorneys for Plaintiff

One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No. 605-225-6310

EXHIBIT A

STATE OF SOUTH DAKOTA)
: SS.
COUNTY OF MARSHALL)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

* * * * *

RICHARD MILLNER,

Plaintiff,

-vs-

Civ. 12-7,

JILL MILLNER, CHOICE
FINANCIAL GROUP, CENTRAL
LIVESTOCK ASSOCIATION, LLC,
and THE UNITED STATES OF
AMERICA (INTERNAL REVENUE
SERVICE)

Defendants.

C O M P L A I N T

* * * * *

COMES NOW the plaintiff, Richard Millner, who states
and alleges as follows:

1. Plaintiff, Richard Millner, is a resident of
Marshall County, South Dakota.

2. Defendant, Jill Millner, is a resident of Marshall
County, South Dakota.

3. Richard Millner and Jill Millner are co-owners of
the following real property in Marshall County, South Dakota:

- N1/2NE1/4 of Section 16, Township 128N, Range 53W
of the Fifth P.M., Marshall County, South Dakota.
- Lots 1-6, Block 14, Rosholt's Addition, Veblen.
- Vacated Blocks 17, 18, 19, 20, 21, 22, 23, and 24,
Rosholt's Addition, Veblen.
- Outlots A through M, Edson's Addition, Veblen.

(the "Real Property")

4. Several entities hold interests of record in the
Real Property, which plaintiff believes will not be materially
affected by this partition action. A true and correct copy of a
title commitment prepared by Marshall Land and Title Co., Inc.,
dated August 25, 2011, is attached as Exhibit A and incorporated

herein by this reference. To the best of plaintiff's knowledge, the title commitment shows all entities holding interests of record in the Real Property.

5. Choice Financial Group holds a mortgage in the amount of \$175,000, which is secured by the Real Property, and was recorded with the Marshall County Register of Deeds on October 19, 2005, at 10:00 o'clock A.M. in Book 157, Pages 195-207.

6. Choice Financial Group holds a mortgage in the amount of \$250,000, which is secured by the Real Property, and was recorded with the Marshall County Register of Deeds on July 6, 2010, at 10:40 o'clock A.M. in Book 173, Pages 780-792.

7. Central Livestock Association, Inc., now known as Central Livestock Association, LLC, holds a mortgage in the amount of \$575,000, which is secured by the Real Property and was recorded with the Marshall County Register of Deeds on December 23, 2010, at 1:30 o'clock P.M. in Book 176, Pages 150-152.

8. Defendant United States of America (Internal Revenue Service) holds a federal tax lien, #56635, against O Dakota Heifers, a partnership in which Richard Millner was a general partner. The federal tax lien was filed by the Chicago, Illinois internal revenue office and was signed by R.A. Mitchell on behalf of Debra A. Stoley on November 18, 2008. The federal tax lien is in the total amount of \$245,887.62. The federal tax lien was filed for record on December 1, 2008, at 10:20 o'clock A.M. A true and correct copy of the Notice of Federal Tax Lien is attached as Exhibit B and incorporated herein by this reference.

9. Partition is sought because the federal tax lien referenced in the preceding paragraph resulted from Richard Millner's involvement in a partnership. The federal tax lien is applicable only as to Richard Millner's interest in the Real Property, but has been filed for record against all of the jointly-owned Real Property. Jill Millner holds an undivided one-half interest in the Real Property that should not be affected by the federal tax lien.

10. Richard Millner seeks an Order of Partition from the Court which vests in Jill Millner fee simple interest in the N1/2NE1/4 of Section 16, Township 128N, Range 53W of the Fifth P.M., Marshall County, South Dakota; and vests in Richard Millner fee simple interest in the remainder of the Real Property described in paragraph 3.

11. This Court has jurisdiction over the subject matter of this action, as the Real Property is situated in Marshall County, South Dakota. Venue is proper in this Court under SDCL 15-5-1. Defendants are subject to the jurisdiction of the State of South Dakota. Pursuant to 28 U.S.C. § 2410, the United States of America may be named a party in this civil action, as it involves the partition of real property.

WHEREFORE, the plaintiff requests judgment as follows:

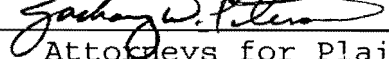
1. A determination by the Court that Richard Millner and Jill Millner are co-owners of the Real Property.

2. An Order and Judgment partitioning the Real Property to vest in Jill Millner fee simple interest in the N1/2NE1/4 of Section 16, Township 128N, Range 53W of the Fifth P.M., Marshall County, South Dakota; and vest in Richard Millner fee simple interest in the remainder of the Real Property described in paragraph 3.

3. Such other and further relief as the Court deems just and equitable.

Dated this 6 day of January, 2012.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

By 
Attorneys for Plaintiff

One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No. 605-225-6310

Old Republic National Title Insurance Co.

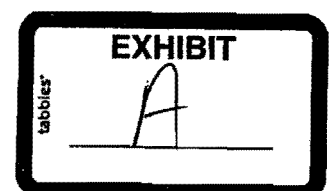
Commitment Number: 7021 MILLNER UPD

SCHEDULE A

1. Commitment Date: August 25, 2011 at 08:00 AM
2. Policy (or Policies) to be issued: Amount
 - (a) Owner's Policy (ALTA Own. Policy (6/17/06)) \$ 240,000.00
Proposed Insured:
TBD
 - (b) Loan Policy (ALTA Loan Policy (06/17/06))
Proposed Insured:
TBD
3. Fee Simple interest in the land described in this Commitment is owned, at the Commitment Date, by
Richard Millner and Jill Millner as joint tenants with rights of survivorship and not as tenants in common.
4. The land referred to in the Commitment is described as follows:
N1/2NE1/4, Section 16, Township 128N, Range 53W, 5th P.M.;
Lots 1-6, Block 14, Rosholt's Addition, Veblen;
Vacated Blocks 17, 18, 19, 20, 21, 22, 23, and 24, Rosholt's Addition, Veblen;
Outlots A through M, Edson's Addition, Veblen;
All in Marshall County, South Dakota

Marshall Land and Title Co., Inc.

By: Diane Lentsch
Diane Lentsch, Abstractor



Old Republic National Title Insurance Co.

Commitment Number: 7021 MILLNER UPD

**SCHEDULE B - SECTION I
REQUIREMENTS**

The following requirements must be met:

- a. Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- b. Pay us the premiums, fees and charges for the policy.
- c. Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- d. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.

Old Republic National Title Insurance Co.

Commitment Number: 7021 MILLNER UPD

**SCHEDULE B - SECTION II
EXCEPTIONS**

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

1. Facts which would be disclosed by a comprehensive survey of the premises herein described.
2. Mechanics', Contractors' or Materialmen's lien and lien claims, if any, where no notice thereof appears on record.
3. Rights and claims of parties in possession.
4. 2009 Real Estate tax due in 2010 (plus interest for all)
Lots 1-6, Blk 14 - parcel #03.03.14.0001 - \$55.84;
Lots 1-6 Vac. Blk 20 - parcel #03.03.20.0001 - \$1,435.58;
Vac. Blks 17-19 & 21-24 - parcel #03.06.01.0001 - \$183.84;
Outlots A-M - parcel #03.07.01.0001 - \$175.50;
N1/2NE1/4, Sec. 16 - parcel #44.53.16.1000 - \$581.36;

2010 Real Estate tax due in 2011 (plus interest for 1st half)
Lots 1-6, Blk 14 - parcel #03.03.14.0001 - \$65.80;
Lots 1-6 Vac. Blk 20 - parcel #03.03.20.0001 - \$1,796.20;
Vac. Blks 17-19 & 21-24 - parcel #03.06.01.0001 - \$208.64;
Outlots A-M - parcel #03.07.01.0001 - \$199.18;
N1/2NE1/4, Sec. 16 - parcel #44.53.16.1000 - \$731.88;
and any subsequent tax and/or special assessments not yet due and payable.
5. Rights of the public in all roads, highways, and section lines not heretofore vacated.
6. Subject to United States and/or State of South Dakota Patent Reservations.
7. Mortgage executed by Richard E. Millner and Jill C. Millner, husband and wife, to Choice Financial Group, Walhalla, 407 12th St., P.O. Box 468, Walhalla, ND 58282, in the amount of \$175,000.00, due in accordance with the terms of the Secured Debt and this Security Instrument, secured by Lots 1-6, Block 14, Rosholt' Add; N1/2NE1/4, 16-128-53; Outlots A-M, Edson's Add.; & Vacated Lots 17-24, Rosholt's Add. Dated October 3, 2005 and recorded October 19, 2005 at 10:00 A.M. in Book 157, Page(s) 195-207.
8. Mortgage executed by Richard E. Millner and Jill C. Millner, husband and wife, to Choice Financial Group - Grand Forks, 1697 S 42nd Street, Grand Forks, ND 58201, in the amount of \$250,000.00, due June 22, 2040, secured by Lots 1-6, Block 14, Rosholt' Add; N1/2NE1/4, 16-128-53; Outlots A-M, Edson's Add.; & Vacated Lots 17-24, Rosholt's Add. Dated June 22, 2010 and recorded July 6, 2010 at 10:40 A.M. in Book 173, Page(s) 780-792.
9. Mortgage executed by Richard E. Millner and Jill C. Millner, husband and wife, to Central Livestock Association, Inc., 310 Market Lane, South St. Paul, MN 55075, in the amount of \$575,000.00, due December 15, 2029, secured by Lots 1-12, Block 14, Rosholt' Add; N1/2NE1/4, 16-128-53; Outlots A-M, Edson's Add.; & Vacated Lots 17-24, Rosholt's Add. Dated December 16, 2010 and recorded December 23, 2010 at 1:30 P.M. in Book 176, Page(s) 150-152.
10. Right of Way Easement executed by Harvey Nelson and Juline Nelson, his wife, to Otter Tail Power Company, a Minnesota corporation, granting the perpetual right of way and easement for construction, operation, maintenance, etc. of an electrical transmission line on the N1/2NE1/4, 16-128-53. Dated February 11, 1954 and recorded March 9, 1954 at 10:30 A.M. in Book RM, Page(s) 33.
11. Right of Way Easement executed by Harvey Nelson, to the United States Department of the Interior

SCHEDULE B - SECTION II
EXCEPTIONS
(Continued)

Commitment Number: 7021 MILLNER UPD

Bureau of Indian Affairs, on N1/2NE1/4, for public highway purposes. Dated April 10, 1979 and recorded July 19, 1979 at 3:30 P.M. in Book ZM, Page(s) 7.

12. Vested Drainage Right executed by William Nordstrom, to the Public.
Dominant Estate: N1/2NE1/4, 16-128-53
Man made modifications consist of ditches, as follows:
 - 1.) 150 rods long x 1-3' deep x 10' wide, flowing northeast
 - 2.) 80 rods long x 1-3' deep x 10' wide, flowing northeastDated June 30, 1992 and recorded June 30, 1992 at 11:40 A.M. in Book GGM, Page(s) 173.
13. Notice of Federal Tax Lien #56635. Department of the Treasury - Internal Revenue Service, against J'Dakota Heifers, a partnership and Richard Millner, Gen. Ptr., in the amount of \$245,887.62, for unpaid 943 tax for periods ending December 31, 2001 to December 31, 2005. Filed December 1, 2008 at 10:20 A.M.

Form 668 (Y)(c)
(Rev. February 2004)

3552

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Area:

SMALL BUSINESS/SELF EMPLOYED AREA #4
Lien Unit Phone: (800) 913-6050

Serial Number

495185308

For Optional Use by Recording Office

56635
State of South Dakota, County of Marshall
Filed this 1 Day of June 20 08 At 10:20
O'Clock A. M. Book 1 Page 99
By Debra A. Stoley
Register of Deeds
Fees \$ 20.00
Deputy

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer O DAKOTA HEIFERS, a Partnership
RICHARD MILLNER GEN PTR

Residence PO BOX 157
VEBLEN, SD 57270-0157

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

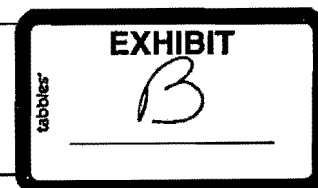
Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
943	12/31/2001	46-0458235	03/05/2007	04/04/2017	26346.94
943	12/31/2002	46-0458235	03/05/2007	04/04/2017	74012.84
943	12/31/2003	46-0458235	03/05/2007	04/04/2017	71721.73
943	12/31/2004	46-0458235	03/05/2007	04/04/2017	50751.86
943	12/31/2005	46-0458235	03/05/2007	04/04/2017	
943	12/31/2005	46-0458235	10/06/2008	11/05/2018	23054.25
Place of Filing MARSHALL COUNTY REGISTER OF DEEDS P.O. BOX 130 Britton, SD 57430					Total \$ 245887.62

This notice was prepared and signed at CHICAGO, IL, on this,

the 18th day of November, 2008.

Signature R. A. Mitchell
for DEBRA A STOLEY

Title
REVENUE OFFICER 24-10-1807
(605) 377-1610



(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax lien
Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Part 1 - Kept By Recording Office

Form 668(Y)(c) (Rev. 2-2004)
CAT. NO 60025X